IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.585 of 1990
WITH
CRIMINAL APPEAL No.586 of 1990
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CRIMINAL APPEAL No.587 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTIBHAI MOTIBHAI LIMBANCHIA

Versus

NANUBHAI GULABHBHAI NAIK

Appearance:

1. Criminal Appeal No. 585 of 1990
   MR MB PARIKH for MR MC SHAH for Appellant No. 1
   NOTICE SERVED for Respondent No. 1,3
   MR DHAVAL VYAS for MS MAMTA R VYAS for Respondent No. 2-3
   (MR KG YAGNIK) for Respondent No. 2,3
   MS HANSA PUNANI, APP for Respondent No. 4
2. Criminal Appeal No. 586 of 1990
   MR MB PARIKH for MR MC SHAH for Appellant No. 1
   MR JB PARDIWALA for Respondent Nos. 1-2
   MS HANSA PUNANI, APP for Respondent No. 3
3. Criminal Appeal No. 587 of 1990
   MR MB PARIKH for MR MC SHAH for Appellant No. 1
   NOTICE SERVED for Respondent No. 1

MS HANSA PUNANI, APP for Respondent No. 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 21/06/2003

COMMON ORAL JUDGEMENT

1. All the aforesaid three appeals have been heard together and are being disposed off by this common judgement in light of the fact that the appellant (original complainant) is the same in all the three matters and is represented by the same advocate. All the three appeals are against the judgement and order dated 09-06-1989 passed by the Court of Chief Judicial Magistrate, Valsad at Navsari, acquitting the original accused for the offences under Section 7(1) read with Section 16 of The Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act').

2. Mr.M.B.Parikh, the learned advocate, appears for the appellant in all the three appeals while Mr.D.D.Vyas appears for respondent Nos.2 and 3 in Criminal Appeal No.585 of 1990, Mr.J.B.Pardiwala for respondent Nos.1 and 2 in Criminal Appeal No.586 of 1990 and Ms.Hansa Punani, the learned Addl. Public Prosecutor, for respondent Nos.4, 3 and 2 respectively in each of the appeals.

3. For the sake of convenience the facts of Criminal Appeal No.585 of 1990 are narrated herein as it is common ground between the parties that the controversy in the other two appeals is identical except for difference in dates, etc.

4. It appears that the complainant is the designated Food Inspector for the Navsari Nagarpalika area. Respondent No.1 is carrying on business of selling milk in the name of proprietary concern Naik Brothers, while respondent No.2 is the Co-operative Union, who is in charge of collecting, processing and marketing milk and respondent No.3 is the Manager of the said Co-operative Union. On 29-06-1984, the complainant purchased two packets of milk of 500 M.L. each and after making the necessary payment, prepared three samples in accordance with the provisions of the Act and the Rules. In light of the fact that there is no dispute raised by the parties as regard the procedure adopted, it is not necessary to record and describe the same in detail as the same forms part of the judgement of the trial Court. The samples were forwarded through the Local Health Authority to the Food and Drug Laboratory, Vadodara for analysis. On receipt of the report of the Public Analyst the Local Health Authority granted consent in light of

the provisions of Section 20 of the Act and accordingly a complaint was filed and prosecution was instituted. The accused - respondents having denied the charges the trial was taken on hand. Ultimately after taking into consideration the evidence led by the prosecution and the submissions of both the sides the trial Court acquitted the accused holding that the prosecution had failed to prove that the complaint was lodged on the basis of a valid and legal consent as required under Section 20 of the Act. It is against this order of acquittal that the present appeals have been filed.

5. Mr.M.B.Parikh, the learned advocate appearing on behalf of the appellant, stated that the trial Court had erred in passing the order of acquittal in light of the fact that the consent accorded by the Local Health Authority had been validly given in accordance with the provisions of the Act and the technical ground on which the trial Court had passed the order cannot be the basis for acquittal as otherwise in all respects the prosecution had proved beyond reasonable doubt that the accused - respondent was guilty of the offences charged with. It was submitted that all the necessary requisite formalities as required by the provisions of the Act and Rules thereunder were duly complied with and there was nothing to disprove the same; that, in fact, it was not the case of the defence that there was any lacuna in observation of the requisite formalities prescribed under the Act and the Rules.

6. Mr.Pardiwala, the learned advocate appearing on behalf of the respondents (original accused) in Criminal Appeal No.586 of 1990, submitted that the consent had been mechanically granted by the Local Health Authority without recording reasons and as per the law as it existed the trial Court had rightly acquitted the accused. It was submitted that the subsequent change in the legal position which requires that consent order need not record reasons could not be applied retrospectively and the concept of 'Prospective Overruling' should be invoked in the present case and the order of acquittal did not require to be interfered with. In support of this submission Mr.Pardiwala referred to the decisions of this Court State of Gujarat Vs. Naranbhai Samji Patel & Ors., reported in 2002 (1) G.L.H. 296 as well as Arvindkumar Trikamlal Raval Vs. Ratilal Hemaji & Anr., reported in 1994 (2) G.L.R. 1177. It was pointed out that in both the decisions this Court had taken a consistent view that in such circumstances even if the accused could be held to be "technically guilty" yet the order of acquittal could not be reversed.

7. Mr.Parikh in rejoinder submitted that this was not a case where the accused were only technically guilty but were infact shown and proved to be guilty beyond reasonable doubt by the prosecution and the order of acquittal which is based on legal position, which has subsequently been held to be incorrect, cannot be allowed to prevail on a technical plea. It was submitted that the Local Health Authority by according consent under Section 20 of the Act had specifically referred to the report of the Public Analyst and that by itself would be sufficient to show that there was application of mind by the said authority as well as the fact that the seized item of food article was adulterated and the reference to the report of the Public Analyst should itself be held to be recording of reasons even if it was held that the same was necessary.

8. Record and proceedings have been requisitioned and have been taken into consideration. Heard the respective parties. It is apparent that in light of the legal position enunciated by this Court the order of acquittal does not require to be interfered with. The trial Court has in its impugned judgement and order reproduced the consent in entirety and if the same is looked into, it is apparent that no reasons are recorded while granting sanction by the Local Health Authority. The position in law at the relevant point of time was that while granting such consent recording of reasons was sine qua non and in absence of the same the case of the prosecution must fail. In the present case, admittedly, no reasons have been recorded. The attempt by Mr.Parikh to canvass that the reference to the report of the Public Analyst would by itself be sufficient to fullfil the requirement as envisaged while granting consent under Section 20 of the Act stands answered by decision of this Court which is based on a decision of the Apex Court. (Reference : Ramanbhai Shivabhai Prajapati Vs. State of Gujarat & Anr., 1991 (1) G.L.R. 82).

9. In the cases of State of Gujarat Vs. Naranbhai Samji Patel & Ors. (supra) and Arvindkumar Trikamlal Raval Vs. Ratilal Hemaji & Anr. (supra) this Court has taken consistent view that even if the contention of the appellant is accepted that the finding recorded by the trial Court holding consent to be invalid is not legal, the order of acquittal recorded by the trial Court cannot be interfered with so as to expose the original accused to another innings of litigation and keep him on trial

for an indefinitely long period, contrary to the mandate of Article 21 of the Constitution. Applying the doctrine of "Prospective Overruling" to the facts of the case, the finding of the trial Court has to be upheld as the same was in accordance with law at the relevant point of time and the finding does not require to be disturbed after a passage of nearly 19 years.

10. For the reasons stated hereinabove, all the three impugned orders of acquittal passed by the Court of Chief Judicial Magistrate, Valsad at Navsari in Criminal Case No.2424 of 1985, Criminal Case No.2480 of 1984 and Criminal Case No.3249 of 1984 dated 09-06-1989 are hereby confirmed. Hence, all the three appeals fail and are hereby dismissed.

Office is directed to place copy of this judgement in all connected matters.

Sd/-

[D.A.MEHTA, J]

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'Bhavesh'